IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 28.11.2006

State of Punjab Vs . Dharampal & another

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. K.S. Boparai, Addl. Advocate General, Punjab
for the appellant

Virender Singh, J.

Respondents Dharampal alias Dharma and Mohan Lal were booked in a case FIR No.106 dated 20.9.2001, registered under Section 302/34 IPC at Police Station City Ferozepur, for committing the murder of Hakumat Rai who was running a Kiryana (grocery) shop at Ferozepur on the night intervening 19 & 20.9.2001 for which they were charged under Section 302/34 IPC. They have now been acquitted vide impugned judgment of learned Sessions Judge, Ferozepur dated 11.2.2006. Aggrieved by the same, the instant appeal has been filed along with a Misc. Application bearing Crl. Misc. No.272-MA of 2006, under Section 378 (3) of the Code of Criminal Procedure for grant of leave to appeal.

We have heard Mr. Boparai, learned Addl. Advocate General, Punjab and with his assistance gone through the impugned

judgment very minutely.

The prosecution in order to substantiate the charge had relied upon the following pieces of evidence:-

(i) Conversation in between both the respondents heard by Kulwant Singh (PW5).
(ii) Removal of ring and wrist watch from the dead body of Hakumat Rai, since deceased.
(iii) Disclosure statement suffered by acquitted respondents and the recoveries pursuant thereto.
(iv) Identification of the articles.
(v) Motive of committing theft.

The learned trial Court while discussing the first flank of evidence has observed that antecedents of Kulwant Singh (PW5) were not good as admittedly he was convicted under Section 326 IPC and was known to Usha Chopra (PW4) the daughter of the deceased who had lodged the first information report. Therefore, the evidence of Kulwant Singh has been doubted by the learned trial Court.

Removal of the ring and wrist watch from the dead body of the deceased has also been disbelieved by the learned trial Court observing that it is not established to the hilt that deceased used to wear ring and wrist watch and that too of the words inscribed 'HR' on ring and words 'PA Maxima' on the watch. The learned trial Court has then observed that Usha Chopra has not

stated about the wrist watch and ring in her initial statement and subsequently in her supplementary statement some information was given with regard to the aforesaid two articles. Finding all these infirmities, the learned trial Court has doubted the case of the prosecution even on these planks.

Finding certain material flaws in the disclosure statement allegedly suffered by the respondent, the learned trial Court disbelieved the same. Similarly, identification of the articles have also been considered as doubtful by the learned trial Court as there was only one ring with the letters inscribed 'HR' and watch with the words 'PA Maxima'. The observation is that it was very easy to identify those articles. Even otherwise certain infirmities have been noticed with regard to the Register No.19 where there was no entry for taking out these articles from Malkhana for showing it to Usha Chopra, the daughter of the deceased.

While commenting on the motive and the investigation conducted in this case, the learned trial Court in para 29 of the impugned judgment has observed as under:-

> "The motive assigned by the prosecution is also not established. As per the statement of Kulwant Singh PW5 the conversation between the accused was that they had got nothing for committing the murder of Hakumat Rai and that they should find another better shop or house for committing theft. But as per the statement of PW4 Usha Chopra there was no safe or

> trunck (box) in the shop/house of her father. There was only one Galla (cash box) and Rs.70/- or Rs.80/- were recovered from the cash box which means that the purpose of the accused was not to commit theft for money as the same remained lying there. Otherwise also, no finger prints were taken or got compared with the finger prints on the dagger or the other articles with the finger prints of the accused. PW10 SI Kewal Krishan has also admitted in his cross-examination that he had called the dog squad and finger print expert on the spot and the Incharge Dog squad told him that no clue was available. Similarly, finger print expert also told him that no article was found containing finger prints of the assailants. DSP Baljit Singh also reached the spot and in his presence also nothing came about the removal of the gold ring or wrist watch. At the same time, on 28.9.01 SI Kewal Krishan has interrogated Pappi rickshaw-puller, Santosh Singh, Sucha Singh, Dhara Singh and Bhayiyae as suspects."

Mr. Boparai has not been able to pin point any infirmity in the impugned judgment. In our considered view, the learned trial Court has dealt with all the material evidence led by the prosecution and then entered into a detailed discussion for rejecting them. We do not find any unreasonableness on any count in the findings of the learned trial Court warranting our interference for taking a different view than the one already taken by the learned trial Court.

Resultantly, finding no substance in the instant appeal, Crl. Misc. No.272-MA of 2006 is hereby dismissed.

(Virender Singh)
Judge

(A.N. Jindal),
Judge

November 28, 2006
'rana'